



Issue Date: 19 March 2020

OALJ Case No.: 2019-FDA-00017

In the Matter of:

CHRISTY SEARS,
Complainant,

v.

BIRDSONG CORPORATION,
d/b/a BIRDSONG PEANUT,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT, DISMISSING CLAIM, AND SEALING SETTLEMENT DOCUMENTS

1. Nature of Request. This case arises under the Food Safety Modernization Act (FSMA), 21 U.S.C. 399(d), and the implementing regulations set forth at 29 C.F.R. Part 1987. Pursuant to 29 C.F.R. § 1987.111, the parties submitted a proposed settlement agreement for the undersigned's approval.

2. Case Procedural History and Settlement Agreement Review.

a. Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging Respondent committed prohibited retaliation under the FSMA. Respondent filed an answer to the complaint in which it denied liability. The undersigned issued a Notice of Case Assignment and Prehearing Order on August 28, 2019.

b. On March 16, 2020, the parties filed a motion requesting the undersigned approve a Confidential Settlement Agreement prepared by counsel for the parties. The Settlement Agreement resolves this matter without the need for a formal hearing, and it was signed by each of the parties.

c. Paragraph 2.3 of the Settlement Agreement provides that Complainant has agreed to keep the terms of the settlement confidential. Although the parties did not specifically request that the settlement documents be filed under seal, the undersigned has determined that sealing the settlement documents is consistent with the Settlement Agreement's intent to keep the terms of the settlement confidential.

d. In particular, 29 C.F.R. § 1987.111(d)(1) states that at any time after the filing of a FSMA complaint and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. Settlements under the FSMA, like other whistleblower cases, cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-00036 (ARB Dec. 16, 2009). Consistent with this required review, the regulations direct the parties to file a copy of the settlement with the ALJ or the Administrative Review Board, United States Department of Labor. 29 C.F.R. 1987.111(d)(2).

e. The undersigned reviewed the factual stipulations, legal issues and obligations imposed upon each party as specifically addressed in the Settlement Agreement. The undersigned concludes the terms and requirements of the Settlement Agreement are fair, adequate, reasonable, and not contrary to public policy.

3. Ruling and Order.

a. The Settlement Agreement is APPROVED and may be enforced pursuant to 29 C.F.R. § 1987.111(e). The parties shall implement the terms as stated in the Settlement Agreement to the extent not otherwise already accomplished. This Order has the same force and effect as one made after a full hearing on the merits.

b. The Settlement Agreement shall be kept confidential pursuant to 29 C.F.R. § 70.26. Accordingly, the Settlement Agreement shall be sealed and remain confidential and will be placed in a sealed envelope in the administrative file.

c. Notwithstanding the parties' agreement, the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a). If a FOIA request is made for the Settlement Agreement, the U.S. Department of Labor will respond and decide whether to exercise its discretion to claim any applicable exemption. The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

d. The hearing scheduled for May 18, 2020 in Lubbock, Texas is CANCELLED.

e. This case is DISMISSED with prejudice.

SO ORDERED this day in Covington, Louisiana.

TRACY A. DALY
ADMINISTRATIVE LAW JUDGE